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Moratorium on the use of the death penalty

Report of the Secretary-General

Summary

The present report is submitted to the General Assembly pursuant to its resolution 65/206. It discusses the trend towards abolition of the death penalty and the establishment of a moratorium on execution. The report also reflects on the application of international standards relating to the protection of the rights of those facing the death penalty. It further discusses the importance of making available relevant information with regard to the use of the death penalty, which can contribute to transparent national debates and international and regional initiatives for the promotion of the universal abolition of the death penalty.

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I. Introduction

1. In resolution 65/206 the General Assembly welcomed the steps taken by some countries to reduce the number of offences for which the death penalty may be imposed and the decisions taken by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty. It called upon all States, inter alia, to establish a moratorium on executions with a view to abolishing the death penalty. It also called upon States which have abolished the death penalty not to reintroduce it and encouraged them to share their experience in this regard.

2. In paragraph 5 of resolution 65/206, the General Assembly requested the Secretary-General to report on the implementation of the resolution at its sixty-seventh session. On the basis of that request, the Office of the United Nations High Commissioner for Human Rights (OHCHR) sent notes verbales to all Member and observer States on 18 April 2012, on behalf of the Secretary-General, requesting relevant information to enable the Secretary-General to prepare his report. Further information was provided by international and regional organizations and intergovernmental bodies, departments, offices and specialized agencies of the United Nations, national human rights institutions and non-governmental organizations (NGOs).[1]

3. In submitting the present report, the Secretary-General draws the attention of the General Assembly to additional relevant information contained in his reports on the question of the death penalty (A/HRC/18/20 and A/HRC/21/29). Attention is also drawn to the reports on the use of the death penalty to be submitted by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, to the General Assembly at its sixty-seventh session.

4. The Secretary-General also draws attention to the note verbale dated 11 March 2012 from the Permanent Missions of 53 Member States to the United Nations in New York, in which they expressed their "persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention to existing stipulations under international law" (A/65/779).

5. The first section of the present report reviews the situation regarding the global use of the death penalty; in particular it discusses the trend towards abolition of the death penalty and the importance of moratoriums in those States which seek to abolish it. The second section reflects on the application of international norms and standards relating to the protection of the rights of those facing the death penalty. The third section outlines international initiatives for the promotion of the universal abolition of the death penalty. Finally, the fourth section discusses relevant regional initiatives in this regard.

[1] The original contributions are available for consultation at the Secretariat of the United Nations.

II. Global use of the death penalty

A. Developments since the adoption of resolution 65/206

6. Approximately 150 of the 193 States Members of the United Nations have abolished the death penalty or introduced a moratorium, either in law or in practice.

7. During the reporting period, Latvia abolished the death penalty for all crimes. In the United States of America, the States of Illinois and Connecticut became the sixteenth and seventeenth states in the country to do so, in March 2011 and April 2012 respectively. Bills to abolish the death penalty are currently pending in the parliaments in Burkina Faso,[2] Bosnia and Herzegovina,[3] Guatemala,[4] Lebanon,[5] Mali[2] and the Russian Federation.[6] In April 2012, the Government of Guyana announced its intention to launch a national debate on whether to abolish the death penalty.

8. The new Moroccan constitution, adopted in 2011, enshrines the right to life in article 20. In June 2011, just prior to the referendum vote that approved the new constitution, the President of the Committee for the Revision of the Constitution stated that this article is meant to put an end to executions. In July 2011, Suriname reported that the recently revised penal code contained no reference to capital punishment (A/HRC/18/12).

9. Several States have established or confirmed a moratorium on the use of the death penalty: Sierra Leone in September 2011, Nigeria in October 2011, Mongolia in January 2012, and the State of Oregon in the United States in November 2011. In July 2011, as part of the universal periodic review of the Human Rights Council, Somalia reported that the Government was considering declaring a moratorium on the death penalty (A/HRC/18/6).

10. Some States have stopped applying the death penalty for certain crimes. In April 2011, Gambia abolished the death penalty for drug offences. In February 2011, China passed a law removing the death penalty for 13 non-violent economic crimes. In addition, in March 2012, China amended its criminal procedure law, including introducing new procedures enhancing access to legal aid, requiring the recording of interrogations and introducing mandatory appellate hearings and more rigorous review processes in capital cases.[7]

B. Ratification of relevant international and regional instruments

11. In 2012, Mongolia and Benin became the seventy-fourth and seventy-fifth States to accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. During the

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[2] Amnesty International, *Death Sentences and Executions 2011* (London, 2012), p. 54.

[3] Note verbale of Bosnia and Herzegovina, dated 8 March 2012 submitted to OHCHR.

[4] Note verbale of Guatemala dated 4 May 2011 submitted to OHCHR.

[5] Note verbale of Lebanon, date 24 May 2012 submitted to OHCHR.

[6] Note verbale of the Russian Federation, dated 27 June 2012 submitted to OHCHR.

[7] "China's new criminal procedure law: death penalty procedures", Dui Hua Human Rights Journal, 3 April 2012, available from http://www.duihuahrjournal.org/2012/04/chinas-new-criminal-procedure-law-death_03.html.

reporting period, in the context of the universal periodic review, Nigeria, the Niger, Nauru, Sierra Leone, Somalia, Suriname, Samoa, Sao Tome and Principe, Tajikistan, Togo, Tunisia and Zimbabwe expressed their intention to ratify the Second Optional Protocol.

12. With regard to regional instruments, during the reporting period Honduras and the Dominican Republic acceded to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty and in January 2012, Latvia ratified Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty. In June 2012, the Russian Federation reported that the President had submitted a draft law to the State Duma on ratification of Protocol No. 13 of the European Convention, which is currently under consideration by the Duma.

13. The Republic of Korea acceded to the European Convention on Extradition on 29 September 2011. According to article 11 of the Convention, "If the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death penalty will not be carried out." A similar provision was included in article 21(3) of the Council of Europe Convention on the Prevention of Terrorism, which entered into force on 1 June 2007. During the period in question, the Convention was ratified by Hungary and Germany in March and June 2011 respectively.

C. Trends in the use of the death penalty

14. The following trends in the use of the death penalty were noted in the context of discussions and interactive dialogues held in the Human Rights Council, in particular in the course of the universal periodic review process.

15. Jamaica stated that that it had had a de facto moratorium on the use of the death penalty since 1988 and that it respected the sentencing principle of proportionality, reserving the death penalty for the most egregious types of murder and only discretionarily imposed after a sentencing hearing (A/HRC/16/14). Maldives noted that it had a long-standing moratorium on the death penalty (A/HRC/16/7). The Niger also reported that the country had a de facto moratorium on the death penalty (A/HRC/17/15).

16. Liberia indicated that, despite various laws allowing for the death penalty, it had not carried out the penalty since 1980 and that, under the constitution, the President had the authority and the prerogative to commute such sentences (A/HRC/16/3). Mauritania reported that no executions had been carried out for 23 years. It further stated that the moratorium would be examined as part of the current reform process, possible alternatives would be considered and conclusions would be reached in accordance with the penal policy of the country (A/HRC/16/17). Myanmar reported that, although the death penalty had not been abolished, it had not carried out the death penalty since 1988 (A/HRC/17/9/Add.1). Saint Lucia stated that the death penalty is reserved for the most heinous crimes and added that it is not currently in a position to move from a de facto to an express moratorium on the

death penalty, or its abolition (A/HRC/17/6). Swaziland reported that although it is a retentionist State in law, it is abolitionist in practice (A/HRC/19/6).

17. The United States noted that that the death penalty is permitted for the most serious crimes, with appropriate safeguards. It further reported that the Supreme Court had recently narrowed down the class of individuals who can be executed, the types of crimes subject to the penalty and the manner in which the punishment is administered, so that it is not cruel and unusual (A/HRC/16/11). Saint Vincent and the Grenadines noted that a series of judicial rulings had limited the scope and applicability of capital punishment in the national context and domestic courts had removed the death penalty as a mandatory sentence and reserved capital punishment for only the most heinous crimes. Additionally, persons who had been on death row for over five years had had their sentences commuted to life in prison (A/HRC/18/15). Malawi reported that its constitution provided that everyone had the right to life and could not be arbitrarily deprived of his or her life, except through the execution of the death penalty imposed by a court of competent jurisdiction (A/HRC/16/4).

18. During constitutional review processes in some States, the question of the death penalty was addressed. The question of the abolition of the death penalty was extensively discussed during the constitutional review process in Sierra Leone and it is expected that this process will continue after the elections in 2012 (A/HRC/18/10). Trinidad and Tobago is currently reviewing its laws with respect to the death penalty and recently piloted the Constitutional (Amendment) (Capital Offences) Bill 2011, to create three categories of murder, limiting the death penalty to the most heinous crimes, with life imprisonment as an alternative punishment (A/HRC/19/7). Zimbabwe also reported that the death penalty was being considered in the process of drawing up a new constitution (A/HRC/19/14). In the United Republic of Tanzania, a bill providing for a constitutional review process was signed into law in November 2011. It is reported that the review will include the compatibility of the death penalty with the right to life enshrined in the constitution (A/HRC/19/4).

III. Protection of the rights of those facing the death penalty

19. Trends with regard to the protection of the rights of those facing the death penalty can be gleaned from recent annual reports of the Secretary-General on the question of the death penalty submitted to the Human Rights Council (A/HRC/18/20 and A/HRC/21/29). Some key trends are also outlined below.[8]

A. Restriction of the use of the death penalty

20. In accordance with article 6, paragraph 2, of the International Covenant on Civil and Political Rights, in States that have not abolished the death penalty, it may only be imposed for the "most serious crimes". The application of this standard in

[8] According to NGOs, at least 18,750 people remained under sentence of death at the end of 2011 and at least 680 people were executed worldwide during that year, excluding China. The exact number of executions carried out in a number of countries was not available. See Amnesty International, *Death Sentences and Executions 2011*, p.7.

recent years has focused on the use of the death penalty for crimes that are not intentional and that do not have lethal or other extremely grave consequences. In his recent report to the Human Rights Council (A/HRC/21/29), the Secretary-General reported that there are currently 32 States or territories which prescribe the death penalty for drug-related offences. It is reported that hundreds of people are known to have been executed for drug-related offences in 2011 and early 2012. Imposing the death penalty for drug-related offences is in violation of article 6, paragraph 2, and the safeguards guaranteeing protection of the rights of those facing the death penalty.[9]

21. The Secretary-General also noted that the use of the death penalty for other non-violent acts, such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults, which may not constitute "most serious crimes" under international human rights norms, is also a particular concern.[10]

22. The Human Rights Committee also continued to address the issue of the restriction of the death penalty to "most serious crimes" in concluding observations adopted following the examination of State party reports. The Committee was concerned that in Ethiopia, death sentences are still imposed by courts for crimes which appear to have a political dimension, as well as following trials held in absentia, without adequate legal safeguards under article 14 of the International Covenant on Civil and Political Rights. It recommended that Ethiopia consider abolishing the death penalty or impose it only for the most serious crimes in compliance with article 14 of the Covenant (see A/66/40, vol. I). With regard to Kazakhstan, the Committee was concerned at the inconsistencies regarding the types of crimes subject to the death penalty, as provided for in the constitution and the criminal code. In particular, it noted that, whereas the constitution prescribes that the death penalty can be established by law only for terrorist crimes entailing loss of life and grave crimes in times of war, the criminal code provides for an expanded list of crimes that are subject to the death penalty (ibid.).

23. In recent years, the application of international standards with regard to the restriction on the use of the death penalty to "most serious crimes" has also focused on the mandatory death penalty (see, for example, E/2010/10, para. 59). The Human Rights Committee has concluded that a mandatory death penalty is not compatible with the limitation of capital punishment to the "most serious crimes". According to the Committee, a mandatory sentence fails to take into account the defendant's personal circumstances and the circumstances of the offence.[11]

24. During the reporting period, legislative reform initiatives were undertaken to abolish the mandatory death penalty in several States. In October 2011, the Attorney General of Barbados announced that it would abolish the mandatory imposition of

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[9] See CCPR/CO/84/THA, para. 14 and CCPR/C/SDN/CO/3, para. 19. See also Economic and Social Council resolution 1984/50 and General Assembly resolution 39/118.

[10] Commission on Human Rights resolution 2005/59, para. 7 (f).

[11] *Rolando vs. Philippines* (CCPR/C/82/D/1110/2002, para. 5.2); *Rayos vs. Philippines* (CCPR/C/81/D/1167/2003, para. 7.2); *Hussain and Singh vs. Guyana* (CCPR/C/85/D/862/1999, para. 6.2); *Chisanga vs. Zambia* (CCPR/C/85/D/1132/2002, para. 7.4); *Chan vs. Guyana* (CCPR/C/85/D/913/2000, para. 6.5); *Larrañaga vs. Philippines* (CCPR/C/87/D/1421/2005, para. 7.2); *Persaud and Rampersaud vs. Guyana* (CCPR/C/86/D/812/1998/Rev.1, para. 7.2); *Weerawansa vs. Sri Lanka* (CCPR/C/95/D/1406/2005, para. 7.2).

the death penalty in accordance with the decision of the Inter-American Court of Human Rights in the case of *Boyce et al. vs. Barbados*.[12] In accordance with the Penal Code (Amendment) Act 2011 of the Bahamas, the courts can now decide between the death penalty and effective lifelong imprisonment in cases of aggravated murder in the Bahamas. In October 2010, Guyana abolished the mandatory death penalty for murder (except in cases of murder of members of the security forces or the judiciary). Uganda confirmed that the death sentence was no longer mandatory, even for capital offences, following the Supreme Court ruling of January 2009: those on death row and not executed within three years had their sentences automatically commuted to life (A/HRC/19/16).

25. In January 2012, the parliament of the Islamic Republic of Iran (Majlis) decided that juveniles below 18 who commit offences under the categories of *Hudud* and *Qisas* (retribution in kind) will not receive mandatory death sentences if the court decides, through forensic reports or any other appropriate means, that the offender did not have adequate mental maturity and the ability to reason.[13]

26. In July 2012, the Government of Singapore announced that it intended to reform legislation providing for the mandatory death penalty, including for drug-related offences. According to reports, the Government also announced that no executions will be carried out until these measures are enacted.[14]

27. The mandatory imposition of the death penalty "with no consideration of the defendant's personal circumstances or the circumstances of the particular offence" was declared unconstitutional in Bangladesh. In its judgment, the High Court Division of the Supreme Court of Bangladesh stated that "any provision of law which provides a mandatory death penalty cannot be in accordance with the Constitution as it curtails the court's discretion to adjudicate on all issues brought before it, including imposition of an alternative sanction upon the accused found guilty of any offence under any law".[15]

28. In June 2011, the High Court of Kenya declared the mandatory death penalty still contained in the penal code to be incompatible with the right to life enshrined in the new constitution of August 2010, thereby confirming the precedent set by the Court of Appeals in 2010.

29. In India, the Bombay High Court declared section 31A of the Narcotic Drugs and Psychotropic Substances Act, 1985, which imposed a mandatory death sentence for drug trafficking, "unconstitutional" in September 2011.[16] On 1 February 2012, the Supreme Court of India declared the mandatory death penalty under the Arms Act 1959 unconstitutional.[17]

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[12] Series C, No. 169, Inter-American Court of Human Rights, 20 November, 2007.

[13] In his report on the Islamic Republic of Iran, the Secretary-General regretted that this new Islamic penal code failed fully to abolish the death penalty or restrict its imposition only for the "most serious crimes" (A/HRC/19/82, para. 8).

[14] "Singapore: proposed mandatory death penalty change a welcome step", Amnesty International news, (London, 10 July 2012).

[15] *Bangladesh Legal Aid and Services Trust and another vs. Bangladesh*, writ petition No. 8283 of 2005, judgment issued in 2010, p. 34.

[16] *Indian Harm Reduction Network vs. the Union of India*, criminal writ petition No. 1784 of 2010.

[17] *State of Punjab* vs. *Dalbir Singh*, criminal appeal No. 117 of 2006, judgment issued on 1 February 2012.

30. The Judicial Committee of the Privy Council of the United Kingdom of Great Britain and Northern Ireland examined the question of the mandatory death penalty in a case where the appellant questioned his non-discretionary death sentence for felony murder under section 2A (1) of the Criminal Law Act (as amended in 1997) of Trinidad and Tobago.[18] The judgment, issued on 15 June 2011, stated that "it is common ground that the mandatory death sentence is cruel and unusual punishment." In August 2011, in another case,[19] the Privy Council reaffirmed the test of discretionary imposition of the death sentence. The Privy Council reaffirmed the sentencing criteria as set out in the seminal cases of *Trimmingham* (2009) and *Earlin White* (2010) and held that the death penalty should only be imposed on those guilty of the "worst of the worst" cases and in circumstances where there was no prospect of rehabilitation. Psychological and/or psychiatric reports need to be obtained in every case in order to determine whether there are prospects of rehabilitation.

B. Fair trial guarantees

31. States that have maintained the death penalty must ensure scrupulous respect of due process guarantees. The imposition of a death sentence upon conclusion of a trial in which the provisions of article 14 of the International Covenant on Civil and Political Rights have not been respected, constitutes a violation of the right to life. Those accused of capital offences must be effectively assisted by a lawyer at all stages of the proceedings. In his recent report to the Human Rights Council, the Secretary-General discussed the issues related to fair trial guarantees in detail (A/HRC/21/29, paras. 31-36).

32. During the reporting period, the High Commissioner for Human Rights expressed concern with regard to the lack of a fair trial in death penalty cases in a number of States. For instance, in January 2012, in a press statement, the High Commissioner expressed her concern at reports that 34 individuals, including 2 women, were executed in Iraq on 19 January following their conviction for various crimes. She expressed particular concern regarding "the lack of transparency in court proceedings, major concerns about due process and fairness of trials and the very wide range of offences for which the death penalty can be imposed in Iraq". In April 2012, in a press briefing, a spokesman for OHCHR expressed serious concern that the de facto authorities in Gaza in the Occupied Palestinian Territory continued to issue death sentences and carry out executions, especially since many of the death sentences were handed down by military courts against civilians, and that the use of military tribunals to try civilians in Gaza seriously undermined guarantees of a fair trial.

33. In June 2012, in a press statement, the Special Rapporteurs on extrajudicial, summary or arbitrary executions, on the situation of human rights in the Islamic Republic of Iran, and on torture and other cruel, inhuman or degrading treatment or punishment condemned the executions of four members of the Ahwazi Arab minority in the Islamic Republic of Iran and expressed concern with regard to the lack of due process and fairness of trials in cases involving the death penalty in the country.

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[18] *Nimrod Miguel vs. Trinidad and Tobago*, Privy Council Appeal No. 0037 of 2010.

[19] *Ernest Lockhart vs. The Queen*, Privy Council Appeal No. 0050 of 2010.

34. The Anti-Death Penalty Asia Network reported that in many countries in Asia, specifically in cases where the death penalty is concerned, the right to a fair trial is impeded by laws which deny due process. Even in countries where due process safeguards exist in principle, including in specific laws, they often do not apply in practice.[20]

35. The right to an appeal is set out in article 14 of the International Covenant on Civil and Political Rights. Any person sentenced to death shall have the right to appeal to a court of higher jurisdiction. Moreover, steps should be taken to ensure that such appeals become mandatory (Economic and Social Council resolution 1984/50, annex, para. 6). The importance of "mandatory appeals or review" was also affirmed by the Economic and Social Council in its resolution 1989/64 of 24 May 1989 (para. 1 (b)).

36. In a judgement on 21 March 2012 in the case of *Cannonier and others vs. the Queen*, the Eastern Caribbean Court of Appeal ruled that section 52(2) of the Eastern Caribbean Supreme Court Act is unconstitutional. The Act imposes a 14-day time limit (from the date of conviction) on the right to appeal, but gives the Court the discretion to extend the time to appeal in all cases except capital cases. The Court of Appeal found this exception unconstitutional, as it imposes an arbitrary limitation on the right to appeal and infringes upon the appellants' right of access to the Court of Appeal to have their conviction and death sentence reviewed.

37. In China, article 223(1) of the recently amended criminal procedure law requires courts of second instance to hold trial hearings for all appeals involving the death penalty.

C. Prohibition of execution of children aged under 18 at the time of the offence

38. A small number of States continue to execute persons aged under 18 at the time of the alleged offence, despite the clear prohibition on such executions under article 6, paragraph 5, of the International Covenant on Civil and Political Rights and article 37 (a) of the Convention on the Rights of the Child. In his report to the Human Rights Council on the question of the death penalty, the Secretary General expressed concern with regard to such executions (A/HRC/21/29, paras. 47-53).

39. Furthermore, the International Juvenile Justice Observatory, Penal Reform International and the Child Rights International Network, in a written submission to the present report, reported that 15 countries still have capital punishment as a sentence for juvenile offenders.[21] These organizations further reported that during the reporting period, children aged under 18 at the time of the alleged offence were executed in the Islamic Republic of Iran, Saudi Arabia and the Sudan. Sentences of capital punishment were reportedly handed down to children under 18 at the time of the alleged offence in Egypt, the Islamic Republic of Iran, the Sudan and Mauritania. Amnesty International reported that young individuals are also on death row in Nigeria, Saudi Arabia and Yemen for offences committed as children.[2]

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[20] Anti-Death Penalty Asia Network, *When Justice Fails: Thousands Executed in Asia after Unfair Trials* (London, Amnesty International, 2011).

[21] Available from: http://www.penalreform.org/news/un-secretary-general%E2%80%99s-report-moratorium-use-death-penalty-consultation-process.

40. In many countries, the difficulty of determining age means that children continue to be sentenced to death, even where the death penalty is not authorized as a sentence for minors. For instance, in Yemen, where the death penalty for minors is prohibited, the Attorney General rejected the appeals of two young persons convicted of murder, one of whom was executed in January 2012; the other remains at risk of execution. The convicts claimed to be under the age of 18, but lacked birth certificates to prove this.[2]

41. During the reporting period, human rights treaty bodies addressed the use of the death penalty for children aged less than 18 at the time of their alleged crimes. For instance, in concluding observations adopted on 4 February 2011 on the second report by Laos on its implementation of the Convention on the Rights of the Child, the Committee on the Rights of the Child expressed its concern that the death penalty is not explicitly prohibited for children in national legislation and urged Laos to take into account its general comment No. 10 (2007) on children's rights in juvenile justice, which refers to the explicit prohibition on imposing the death penalty or life imprisonment on persons aged less than 18 when the crime was committed (CRC/C/LAO/CO/2, paras. 71 and 72). In October 2011, the Human Rights Committee expressed grave concern about the continued execution of minors and the imposition of the death penalty for persons who were found to have committed a crime while under 18 years of age in the Islamic Republic of Iran. The Human Rights Committee recommended that the Islamic Republic of Iran immediately end the execution of minors and further amend the draft juvenile crimes investigation act and the bill of the Islamic criminal code, with the aim of abolishing the death penalty for persons who have committed a crime while under the age of 18. The State party should also commute all existing death sentences for offenders on death row who committed a crime while under the age of 18.[22] Furthermore, the reports of the Secretary General to the Human Rights Council provide detailed information on this issue (A/HRC/18/20 and A/HRC/21/29).

D. Non-discrimination in the use of the death penalty

42. Non-compliance with the principle of non-discrimination is also a major concern when considering the application of the death penalty. A death sentence is often imposed on less privileged individuals who do not have access to effective legal representation. Membership of a racial, religious, national, ethnic or sexual minority has often been identified as a significant factor in decisions that have led to the death sentence (A/HRC/21/29).

43. In the United States, the North Carolina Racial Justice Act 2009 allows defendants in cases where the death penalty could be imposed, to use statistical evidence to show systemic bias in its imposition. If a defendant can successfully prove that race was a significant factor in the decision to seek or impose the death penalty at the time of his or her trial, the court is required to convert that sentence to life imprisonment. In April 2012, a judge in North Carolina found statistical evidence of racial bias in a case and commuted the death sentence of Marcus Robinson to life without parole. The Court concluded that race was a materially, practically and statistically significant factor in the decision to exercise peremptory

[22] CCPR/C/IRN/CO/3, para. 13.

challenges during jury selection and in the decision of prosecutors at various stages of the trial of Mr. Robinson from 1990 to 2010.

E. Making relevant information available with regard to the use of the death penalty

44. In its resolution 65/206 the General Assembly called upon States to make available relevant information with regard to their use of the death penalty, which could contribute to informed and transparent national debates. During the reporting period, official figures on the use of the death penalty were unavailable in a number of countries. In Belarus, China, Mongolia and Viet Nam, data on the use of the death penalty is still classified as a State secret. In Viet Nam, publishing statistics on the use of the death penalty continues to be prohibited by law. Little or no information was available from the Democratic People's Republic of Korea, Egypt, Eritrea, Libya, Malaysia or Singapore. However, in July 2011, Singapore accepted the recommendation of the Working Group on the Universal Periodic Review to make available statistics and other factual information on the use of the death penalty (A/HRC/18/11, para. 95.15).

45. In 2011, the Committee against Torture was concerned by reports, inter alia, regarding the secrecy and arbitrariness surrounding the execution of persons sentenced to death in Belarus. In this regard, the Committee recommended that Belarus should remedy this, so that family members do not have added uncertainty and suffering, and consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (CAT/C/BLR/CO/4, para. 27). Human rights organizations in Belarus further reported that families of recently executed persons are still not informed where their relatives are buried.[23]

46. In, March 2011, the Human Rights Committee concluded that Kyrgyzstan had violated article 19 of the International Covenant on Civil and Political Rights by denying access to information held by the State on the number of individuals who had been sentenced to death. The Committee stated that information on the use of the death penalty was of public interest and therefore that a right of access to that information existed in principle. The Human Rights Committee stated that any denial of information must be justified by the State party, which Kyrgyzstan had failed to do in this case.[24]

47. Amnesty International reported that in the Islamic Republic of Iran, accurate and complete information about the number of people under sentence of death is not published by the authorities and the legal situation in many individual cases often remains unclear for months, sometimes for years. The lack of information is exacerbated by the fact that families or lawyers may have only very limited access to the convicted person and also by contradictory statements issued by various branches of the Government and regional and central authorities.[2]

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[23] "Death penalty in the Republic of Belarus", report submitted to OHCHR by Belarusian Human Rights House in exile, Human Rights House Foundation, Penal Reform International, London and Human Rights Centre "Viasna", April 2012.

[24] Communication No. 1470/2006, *Toktakunov vs. Kyrgyzstan,* views adopted on 28 March 2011.

IV. International initiatives towards abolition of the death penalty

United Nations High Commissioner for Human Rights

48. The High Commissioner for Human Rights continued to address the question of the death penalty under her mandate to promote and protect the enjoyment and full realization, by all people, of all human rights. The OHCHR management plan for 2012-2013 reaffirms that, pursuant to General Assembly resolutions 62/149 (2007), 63/138 (2008) and 65/206 (2010) on a moratorium on the use of the death penalty, it will continue to advocate and provide support to Member States, civil society and other stakeholders with regard to the establishment of a moratorium by States on the use of the death penalty, with a view to abolishing it.

49. In July 2012, OHCHR convened a global panel in New York on "Moving away from the death penalty — lessons from national experiences". The objectives of the global panel were to maintain and build momentum on the issue in preparation for the General Assembly to adopt a resolution on a moratorium on the use of death penalty at its sixty-seventh session; to share experience in countries where there have recently been positive initiatives in respect of the abolition of the death penalty; and to identify areas where compliance by States with international standards can be enhanced, pending abolition of the death penalty in retentionist countries.

50. OHCHR also continued to advocate for the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. With the support of OHCHR, in September 2011 the Permanent Mission of Belgium to the United Nations Office at Geneva and the World Coalition against the Death Penalty organized a side event during the eighteenth session of the Human Rights Council, to mark the twentieth anniversary of the entry into force of the Second Optional Protocol. In December 2011, a seminar on the reform of the death penalty was organized in China by the Ministry of Foreign Affairs with the support of OHCHR. In July 2012, a workshop on the ratification of the Second Optional Protocol was organized in Cambodia.

51. OHCHR also continued to monitor the application of the death penalty. The High Commissioner and others expressed their concern through press releases and communications to the relevant authorities in relation to the imposition of death sentences in Bahrain, the Islamic Republic of Iran, Iraq and the Occupied Palestinian Territory.

United Nations Office on Drugs and Crime

52. In May 2012, the United Nations Office on Drugs and Crime (UNODC) published a paper articulating its position on the promotion and protection of human rights as part of its work. Taking note of applicable international standards, it noted that if "a country actively continues to apply the death penalty for drug offences, UNODC places itself in a very vulnerable position vis-à-vis its responsibility to respect human rights if it maintains support to law enforcement units, prosecutors or courts within the criminal justice system". It further noted that "At the very least, continued support in such circumstances can be perceived as legitimizing government actions. If, following requests for guarantees and high-level political

intervention, executions for drug-related offences continue, UNODC may have no choice but to employ a temporary freeze or withdrawal of support".[25]

Special Representative of the Secretary-General on Violence against Children

53. During the past year, the Special Representative of the Secretary-General on Violence against Children has also continued giving her support to the campaign, launched with the Child Rights Information Network, to end all inhuman sentencing of children, including the death penalty. As a result of her efforts, special emphasis has been placed on the adoption of national legislation in many States, banning all forms of violence against children, including capital punishment, and on the implementation of international human rights standards within the justice system, with priority attention given to the abolition of death penalty and the suspension of execution of death penalty sentences imposed for offences committed by persons under 18.

International Commission against the Death Penalty

54. The International Commission against the Death Penalty was established in October 2010. The establishment of the Commission was an intergovernmental initiative led by Spain and supported by 16 States (Algeria, Argentina, the Dominican Republic, France, Italy, Kazakhstan, Mexico, Mongolia, Norway, the Philippines, Portugal, South Africa, Spain, Switzerland, Togo and Turkey). Switzerland currently holds the presidency of the support group, which will pass to Norway in October 2012. The Commission is composed of 12 members. Since its creation, it has undertaken a number of activities aimed at abolishing capital punishment and propagating respect for international safeguards for those facing the death penalty.

World Day against the Death Penalty

55. States, international and regional bodies and NGOs around the globe observed the ninth World Day against the Death Penalty on 10 October 2011. The Government of Rwanda organized a regional conference in Kigali on the abolition of the death penalty or the adoption of a moratorium on its execution. Belgium, Chile and the World Coalition against the Death Penalty jointly organized a panel discussion in Geneva on the international jurisprudence on the death penalty and the prohibition of cruel, inhuman or degrading treatment.

56. In a joint declaration issued on 10 October 2011, World Day against the Death Penalty, the European Union High Representative for Foreign Affairs and Security Policy and the Secretary General of the Council of Europe reaffirmed their united opposition to the death penalty and their commitment to its worldwide abolition, describing it as inhumane, ineffective, unjust and irreversible, and noted that experience in Europe had taught that the death penalty did not prevent an increase in violent crime, nor did it bring justice to the victims of such crimes.

[25] UNODC, *UNODC and the Promotion and Protection of Human Rights*, p.10, available from www.unodc.org/documents/justice-and-prison-reform/UNODC_HR_position_paper.pdf.

V. Regional initiatives towards abolition of the death penalty

Africa

57. A study on the question of the death penalty in Africa, prepared by the Working Group on the Death Penalty in Africa of the African Commission on Human and People's Rights, was adopted by the Commission at its fiftieth ordinary session, held from 24 October to 7 November 2011 in Gambia, and officially launched on 19 April 2012. The broad aim of the study is to provide a background to the understanding of the death penalty from the historical and practical perspective and that of human rights law, and to recommend an integrated approach to the abolition of the death penalty in Africa. Strategies proposed in the study include, inter alia, continuing to work closely with United Nations organs, in particular OHCHR, to mobilize support for the abolition of the death penalty and recommend to the African Union and to States parties the adoption of a protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty.[26]

58. In March 2011, the Death Penalty Project held a regional meeting in Nairobi. The meeting reviewed progress in the region and identified strategies for future implementation. The resolution adopted at the regional conference hailed the positive example of Rwanda, which had abolished the death penalty even for perpetrators of genocide, and noted that the death penalty was not normally part of the traditional African justice system.[27]

Asia

59. In November 2011, a conference on the progressive abolition of the death penalty and the possibility of further law reform in Asia was hosted by the City University in Hong Kong. In February 2012, the Death Penalty Project organized a South-East Asia regional strategy meeting in Kuala Lumpur. The meeting was attended by legal experts from the region and representatives from the European Union and the United Kingdom. A legal network on the death penalty consisting of lawyers, NGOs and academics from Indonesia, Malaysia, the Philippines, Singapore, Taiwan, Thailand, the United Kingdom and Viet Nam was established at the meeting.

Americas, including the Greater Caribbean

60. The inter-American human rights mechanisms also continued to address the question of the death penalty during the reporting period. On 2 November 2011, a petition was submitted to the Inter-American Commission on Human Rights against the United States of America, on behalf of Ivan Teleguz, who was on death row in the state of Virginia. It was alleged that Mr. Teleguz had not received an effective and adequate defence, that his due process rights had not been respected and that he had been arrested, tried and sentenced to death without having been informed of his right to contact Ukrainian consular officers, as provided for in the Vienna Convention on Consular Relations. On 22 December 2011, the Inter-American Commission notified the United States of America that precautionary measures had

[26] See www.achpr.org/news/2012/04/d46/.

[27] The resolution of the conference is available from http://www.minijust.gov.rw/moj/AX_Articles.aspx?id=751.

been granted on behalf of the alleged victim and requested a stay of execution until such time as it should pronounce on the merits of the petition.[28]

61. In October 2011, with the support of the Government of Spain, an international conference on the death penalty in the Greater Caribbean took place in Madrid. The conference was attended by representatives, national human rights institutions, NGOs, faith-based organizations and academics from the Greater Caribbean and representatives of regional and international organizations, including the International Commission against the Death Penalty. While recognizing the high levels of violence and crime that the region suffers, the participants reaffirmed human rights and called for a moratorium on the death penalty as a prelude to moving towards total abolition. The need to support the victims' families and to find proper ways to lower the appalling crime rates in the region was also discussed and a press release containing several recommendations was issued.[29] The Working Committee of the Greater Caribbean for Life was also established to communicate information, to consult widely and to draw up an operational plan for abolition of the death penalty.

Europe and Central Asia

62. The European Union has continued to actively implement its 1998 guidelines on the death penalty (revised in 2008)[30] through diplomatic measures, including dialogue and consultation on human rights with third countries, including Belarus, China, the Islamic Republic of Iran, Iraq, Japan, Saudi Arabia and the United States, based on the minimum standards defined by international law and the EU guidelines. In 2011, the European Union also issued statements on over 15 individual cases and carried out more than 15 démarches and other measures regarding individual cases. During the first semester of 2012, the European Union also published 7 statements or declarations, and carried out 6 démarches and other measures regarding individual cases.

63. In September 2011, with the assistance of the European Union and the United Kingdom, Penal Reform International organized an international conference in London entitled "Progressing toward abolition of the death penalty and alternative sanctions that respect international human rights standards". The conference brought together over 100 representatives from 31 countries of Central Asia, East Africa, Eastern Europe, the Middle East and the southern Caucasus, representing Governments, members of the judiciary, lawyers, national human rights institutions, academics, penal reform and justice experts, intergovernmental organizations, international NGOs and other key global stakeholders working for the abolition of the death penalty. The declaration adopted at the conference called for abolition of the death penalty, for a universal moratorium on executions and for alternative sanctions that are fair, proportionate and respect international human rights standards. The declaration also called upon the Arab League and the African Commission on Human and Peoples' Rights to initiate negotiations to explore the

[28] Inter-American Commission on Human Rights, report No. 16/12 on petition P-1528-11, Admissibility, *Ivan Teleguz vs. United States*, 20 March 2012.

[29] Available from www.nodeathpenalty.santegidiomadrid.org/?p=740.

[30] Available from www.consilium.europa.eu/uedocs/cmsUpload/10015.en08.pdf.

possibility of adopting regional protocols aiming at the abolition of the death penalty.[31]

64. In 2011, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) published a background paper on the death penalty in the OSCE area which provides a concise update of changes in the status of the death penalty in OSCE States during the period from 1 July 2010 to 30 June 2011.[32] With the support of OSCE, an international conference was held in Tajikistan in May 2011 on ratification of the Optional Protocol to the International Covenant on Civil and Political Rights.

65. A regional conference on abolition of the death penalty in Central Asia was held in Astana on 26 April 2011. The conference brought together representatives from governmental bodies and agencies, the non-governmental sector and academia from Kazakhstan, Kyrgyzstan and Tajikistan, as well as representatives from international organizations.

Middle East and North Africa

66. The fifth regional workshop on the role of judges, public prosecutors and lawyers in reducing the application of the death penalty in the Arab States was organized by the Arab Center for the Independence of the Judiciary and the Legal Profession in cooperation with the Lebanese institution for democracy and human rights and with the support of the European Union. Forty delegates from 10 States in the Middle East and North Africa participated in the workshop and adopted a set of principles and recommendations to reduce the application of the death penalty in both legislation and practice and in regard to the role of legal professionals, such as judges, public prosecutors and lawyers, in this area.[33]

VI. Conclusions and recommendations

67. **Since the adoption of resolution 65/206 by the General Assembly, there have been significant developments towards the universal abolition of the death penalty. Currently, more than two thirds of States Members of the United Nations have either abolished the death penalty or do not practice it. States which have taken a position in favour of abolition of the death penalty represent different legal systems, traditions, cultures and religious backgrounds. Some Member States which opposed the abolition of the death penalty in the recent past have moved to abolishing it or have imposed a moratorium.**

68. **Even in countries which have retained the death penalty, some noticeable steps towards restricting its use were recorded during the reporting period. In particular, national judiciaries in many States have played a crucial role, including ensuring scrupulous respect for fair trials and due process guarantees and stopping discriminatory practices in the use of the death penalty.**

[31] The full text of the declaration is available from http://www.penalreform.org/publications/london-declaration.

[32] Available from www.osce.org/odihr/43635.

[33] Available from http://www.icab.cat/files/242-318767-DOCUMENTO/Recommendations%20on%20the%205th%20regional%20Workshop%20on%20The%20Role%20of%20Judges.pdf.

69. **While waiting for universal abolition, States which have not yet done so should introduce a moratorium on executions with a view to abolishing the death penalty. Those States which still intend to implement the death penalty and are not willing to establish a moratorium, should ensure the protection of the rights of those facing the death penalty, pursuant to the relevant international norms and standards. In particular, they should restrict the use of the death penalty to the "most serious crimes" and abolish the mandatory use of this penalty, in accordance with the general principles set out in article 6 of the International Covenant on Civil and Political Rights.**

70. **The final paragraph of article 6 of the Covenant states that "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State party to the present Covenant". To date, the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty has been ratified by 75 States. States which have not yet done so should ratify the Second Optional Protocol.**

71. **The lack of comprehensive data with regard to the number of executions, or the number of individuals on death row, is a serious impediment to any national debate which may lead to a move towards the abolition of capital punishment in a given State. For the effectiveness and transparency of national debate, States should ensure that the public is provided with information covering all aspects of the argument about the death penalty and with information and accurate statistics on criminality and the various effective ways to combat it, short of the death sentence.**

72. **The international community, including United Nations offices, departments, agencies and funds and regional intergovernmental bodies and other entities, including non-governmental organizations, should continue and strengthen their support for the global abolition of the death penalty.**